IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

IN RE LAWN MOWER ENGINE HORSEPOWER MARKETING AND SALES PRACTICES LITIGATION	MDL No. 1999 2:08-md-01999 **THOMAS L. COX, JR'S OBJECTION TO CLASS NOTIFICATION, OBJECTION TO PROPOSED SETTLEMENT, OBJECTION TO ATTORNEYS' FEES REQUEST, NOTICE OF INTENTION TO APPEAR, AND REQUEST TO SPEAK AT THE HEARING**

To The Honorable District Judge:

Comes Thomas L. Cox, Jr. ("Objector"), and files these Objections to the Proposed Settlement, Objection to Class Notification, Objection to Attorneys' Fees, Notice of Intent to Appear and Request to Speak at the Hearing, and would show as follows:

1. Objector is a class member

Objector declares that the following statements are true and correct:

(a) I am a member of the class.

(b) I purchased a Murray Select 22" Convertible Mulcher from Home Depot.

(c) I did not receive personal postcard notice of this action. I do not recall exactly when I purchased the mower, but I still own it and the materials/manual/warranty is dated as effective July 1, 2000, by Briggs & Stratton. I have attached the materials/manual/warranty as Exhibit “1.” Although it is difficult to read, the model appears to be 12H02, Type 3190-B1 and Code is 00102D56. The product was a Murray Mower, SKU #597-805.

(d) I object to the Settlement in this case, and I specifically object to each of the five individual settlements.

2. Objection to Class Notice

Objector’s initial objection is that the deadline for filing objections predates: (1) the filing of the Fee Petition, (2) the placement of a value on the warranty, and (3) the notice plan. Therefore, Objector reserves his right to amend and, if necessary, comment on any additional information or changes.

Potential class members are entitled to, among other things, the best notice that is practicable under the circumstances. Fed. R. Civ. P. 23(2) Class counsel failed in their attempt to meet the above burden. In fact, notice in this case fails to meet almost all of the requirements of Fed. R. Civ. P. 23(c)(2)(B). Although Kinsella Media has been approved as notice administrator and a settlement website established, documents currently available give no indication of how notice is to be disseminated. Because of the class definition, persons who purchased a mower between 1/1/94 until 4/12/2010, millions of people will be eligible and, except for recent purchasers, postcard notice is likely to be ineffective. At a minimum, all settling defendants should post a link on their websites to the settlement website. Further, all settling defendants who either own directly or control retail outsets or franchise dealerships should be required to post notice in the retail outlets.

As to class members, opening a website is insufficient and: (1) fails to meet due process requirements; (2) does not constitute the best notice practicable under the circumstances and; (3) is insufficient notice to all persons entitled to notice of the settlement. Objector reserves the right to object to the notice plan when it is published.

3. Objections to the Settlement

The settlement is not fair, reasonable, or adequate, and Objector objects to the proposed settlement, for the following reasons:

The cash value of settlement has been placed at 65 million yet the value of the warranty has not been disclosed to class members. While the value of the settlement to class members can be "up to $35 for each walk behind mower" and "up to $75 for each riding mower," the payment to each class member is likely to be substantially less. Undisclosed to class members is the total number of mowers sold during the period even though the Preliminary Approval Order notes that class members in the millions. How widely the settlement is publicized will affect the number of claims submitted, yet the notice plan is still unpublished.

To the extent that the settling defendants have records of the class members that purchased a mower, that class member should not have to file a claim to obtain an extended warranty. The settling defendants simply extend the warranty for a period of one year regardless of whether or not the class member files a claim.

Provision should be made for a *Cy Pres* distribution of uncashed settlement checks.

The amount of the proposed fees in relation to the probable actual benefits to the class renders the settlement unfair and unreasonable. The amount of the proposed attorneys' fees is an integral element in determining whether the settlement is fair, reasonable, and adequate:

> The court's settlement review should include provisions for the payment of Class Counsel. In class actions whose primary objective is to recover money damages, settlements may be negotiated on the basis of a lump sum that covers both class claims and attorney fees. Although there is no bar to such arrangements, the simultaneous negotiation of class relief and attorney fees creates a potential conflict … The judge can condition approval of the settlement on a separate review of the proposed attorneys' compensation.

MANUAL FOR COMPLEX LITIGATION 4th § 21.7, p. 335.

4. Objections to the Fee Petition - Common Fund

Objector objects to the request for fees to Class Counsel. Objector reserves the right to file objections to the fee petition at a later date because as of today, the only document available is the affidavit of Vincent J. Esades which simply alleges that 21,193 attorney hours were consumed and expenses of $479,721.89 were paid.

The long form notice indicated that class counsel may seek up to one-third (1/3) of the cash value of the settlement as fees. This amount is excessive and should be reduced.

Objector expressly objects to an award of attorneys fees that exceeds 20% of the actual value to class members.

To the extent that attorneys fees or expenses have been calculated on contractees or temporaries from employment agencies and a multipliers applied, Objector contends that no multiplier should be used.

Objector reserves his right to supplement this objection once the Fee Petition is filed.

Objector reserves the right to further comment on the Fee Petition when the document is filed.

5. Objections to the Fee Petition - Warranty

The Class notice indicates that the class counsel may seek up to 14 million for fees related to the extended warranty. This looks and smells like a coupon settlement. Because the extended warranty is for only a year, the fee award for the extended warranty should be limited to a reasonable percentage of warranty work actually performed. As with other important points of this settlement, the alleged value of the extended warranty has not been disclosed to class members.

6. Objector Incorporates by Reference any Proper Objections Filed by Other Objectors Herein.

Wherefore, Objector prays that the Court deny the proposed settlement, deny the requested fees to Class Counsel and grant Objector such other and further relief as to which Objector may be entitled.

/s/

Thomas L. Cox, Jr.
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Dated: June 3, 2010

Certificate of Service

I hereby certify that a copy of the above and foregoing document has been served upon the following on the 3rd day of June, 2010:

Vincent J. Esades
Heins Mills & Olson, P.L.C.
310 Clifton Avenue
Minneapolis, MN 55403

And by USPS delivery and ECF filing to:

Clerk of the Court
United States District Court
Eastern District of Wisconsin
Milwaukee Division
362 United States Courthouse
517 East Wisconsin Avenue
Milwaukee, WI 53202

/s/
Thomas L. Cox, Jr.